IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 7, 2003 Session

STATE OF TENNESSEE, EX REL. CHRISTINE MITCHELL v. DONALD FILMORE JOHNSON

Appeal from the Chancery Court for Giles County
No.'s 2689 & 2506 Robert L. Jones, Judge

No. M2002-00231-COA-R3-CV - Filed October 2, 2003

In this appeal, Christine Mitchell brought an action to enforce a child support order which was entered in 1971. The trial court dismissed the petition as untimely due to the statute of limitations in Tenn. Code Ann. § 28-3-110. Because one of the five children benefitting from the child support order was still a minor at the time Tenn. Code Ann. § 36-5-103(g), abolishing the statute of limitations with respect to child support, became effective, we affirm in part, reverse in part, and remand.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part, Reversed in Part and Remanded

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., M.S. and W. FRANK BROWN, III, SP. J., joined.

Paul G. Summers, Attorney General & Reporter; Stuart F. Wilson-Patton, Senior Counsel, for the appellant, State of Tennessee ex rel. Christine Mitchell.

T. Lance Carter, Fayetteville, Tennessee, for the appellee, Donald Filmore Johnson.

OPINION

On October 8, 1969, Christine C. Johnson (Ms. Mitchell) filed for a divorce from bed and board from Donald Filmore Johnson in Giles County, Tennessee. The trial court granted the separation, awarded custody of the couple's four minor children[1] to Ms. Mitchell and required Mr. Johnson to pay fifty percent (50%) of his income as child support and alimony.

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[1]The first four children were born February 27, 1962, December 5, 1964, September 13, 1966, and April 6, 1969.

Ms. Mitchell filed for an absolute divorce on December 1, 1970. The absolute divorce was granted on January 5, 1971. The trial court awarded custody of the couple's five[2] minor children to Ms. Mitchell and required Mr. Johnson to pay $75 per week in child support for those five children to the office of the Clerk and Master.

Mr. Johnson moved to West Virginia in 1972, where he remarried and had two additional children. On December 19, 1986, Ms. Mitchell filed a petition for contempt alleging that Mr. Johnson had not paid child support and that the arrearages equaled $61,200. The petition for contempt was never served. Mr. Johnson returned to Giles County, Tennessee in 1988, where he has resided ever since.

On September 25, 2001, Ms. Mitchell, represented by the State, filed a petition to enforce child support. The petition was heard by the trial court without a jury. According to the Statement of the Evidence, the only witnesses to testify were Ms. Mitchell and Mr. Johnson.

Ms. Mitchell testified that Mr. Johnson never paid any support whatsoever. She also testified that she attempted to collect support only by filing the 1986 petition for contempt and the subject petition to enforce child support. She stated that she became discouraged after she had no success on the contempt petition in 1986 and that she thought Mr. Johnson was still in West Virginia waiting until all of the children were eighteen years of age or older. She calculated Mr. Johnson's arrearages to be $77,250.

Mr. Johnson testified that although all six of the children were his, the child support order only applied to five of them and that he paid some support, but that he never paid any support to the Clerk and Master as he was required to do by the final divorce decree. He also admitted that he has no record or receipt of any payment of child support and that he had no idea how much support he had paid throughout the years.

After hearing the testimony of the parties, the trial court determined:

> The Court recognizes that T.C.A. 36-5-103 (g) provides; "Judgments for child support payments for each child subject to the Order of child support pursuant to this part shall be enforceable without limitation as to time;" that the court further finds that this cause is subject to the statute of limitations as set out in T.C.A. 28-3-110, the 10 year statute of limitations; that the statute began to run January, 1989 [when the trial court found that Ms. Mitchell learned of Mr. Johnson's return to Tennessee]; and that this cause is, therefore, barred by the said statute of limitations.

Ms. Mitchell appeals, arguing that the statute of limitations in Tenn. Code Ann. § 28-3-110 does not apply to child support arrearages that have not been reduced to judgment and that the statute of limitations for child support orders was abolished by Tenn. Code Ann. § 36-5-103(g). Further,

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[2]The fifth child was born May 8, 1970. A sixth child was born to the couple on June 14, 1971, but the child support order was never altered to apply to the sixth child.

the State argues that the statute of limitations in Tenn. Code Ann. § 28-3-110 does not apply to the State of Tennessee.

Mr. Johnson maintains on appeal, as he did in the trial court, that the cause of action is barred by the statute of limitations in Tenn. Code Ann. § 28-3-110.

The basic facts relevant to this appeal are not in dispute. The resolution of this case turns on the interpretation and application of various statutes in effect during the period at issue. Because the construction of a statute and its application to the facts are issues of law, our standard of review is *de novo* without any presumption of correctness for the trial court's conclusions of law. *Lavin v. Jordon*, 16 S.W.3d 362, 364 (Tenn. 2000).

I. Abolition of Statute of Limitations

In 1997, the General Assembly adopted what is now Tenn. Code Ann. § 36-5-103(g), which provides

> judgments for child support payments for each child subject to the order for child support pursuant to this part shall be enforceable without limitation to time.

That provision became effective July 1, 1997, twenty-six years after entry of the child support order sought to be enforced in this case. Because a defendant has a vested right in a statute of limitations defense if the cause of action has accrued and the limitations period has expired, *Wyatt v. A-Best Prods. Co., Inc.*, 924 S.W.2d 98, 104 (Tenn. Ct. App. 1995), and because the Tennessee Constitution prohibits retroactive application of a statute where such application would impair vested rights, *Doe v. Sundquist*, 2 S.W.3d 919, 923 (Tenn. 1999), this court has previously held that Tenn. Code Ann. § 36-5-103(g) cannot be applied retroactively to resuscitate a child support judgment that was otherwise no longer enforceable due to expiration of an applicable statute of limitations. *Frye v. Frye*, No. M2000-02123-COA-R3-CV, 2001 WL 839039, at *2-*3 (Tenn. Ct. App. Jul. 24, 2001) (no Tenn. R. App. P. 11 application filed); *County of San Mateo, Cal. v. Green*, No. M1999-00112-COA-R3-CV, 2001 WL 120729, at *2 (Tenn. Ct. App. Feb. 14, 2001) (no Tenn. R. App. P. 11 application filed).

Consequently, the question is whether Mr. Johnson had a vested right in the protection of a statute of limitation prior to July 1, 1997.

II. Pre-1997 Limitations Period

The general statue of limitations, which the trial court determined barred the action herein, is set out in Tenn. Code Ann. § 28-3-110:

> The following actions shall be commenced within ten (10) years after the cause of action accrued: . . . (2) Actions on judgments and decrees of courts of record of this or any other state or government; and (3) All other cases not expressly provided for.

The child support order herein was entered in 1971. Prior to the enforcement action that is the subject of this appeal, Ms. Mitchell never pursued enforcement of the order to the point there was a judgment for arrearages. That distinction plays a role in our analysis because it helps explain the courts' historical approach to the issue before us. As this court explained a number of years ago:

> In the case of *Hopkins v. Potter*, announced at this term, this Court distinguished between the status of *final judgments* for delinquent alimony and/or support and *judgments less than final* in respect to the amount of previously ordered alimony and/or support. The former are not subject to forgiveness or modification in amount, whereas the latter retain their character of alimony or support to the extent that they may be forgiven or modified under the general powers of a divorce court to retroactively forgive or modify delinquent installments of alimony or support.

Zeitlin v. Zeitlin, 544 S.W.2d 103, 109 (Tenn. Ct. App. 1976) (citations omitted); *see also Gossett v. Gossett*, 34 Tenn. App. 654, 241 S.W.2d 934 (1951) (holding that the court had the power to grant relief from past due child support payments). Thus, prior to legislative action in 1987, orders for child support remained modifiable, even retroactively, and a trial court had discretion to suspend or forgive arrearages. *Hoyle v. Wilson*, 746 S.W.2d 665, 672 (Tenn. 1988).[3]

As the *Zeitlin* opinion makes clear, a judgment for arrearages has consistently been considered final. Consequently, such a judgment is subject to the ten year statute of limitations. "In those cases where the arrearages for child support have been reduced to a judgment for a sum certain, the custodial parent is required to bring the action for enforcement within ten years of obtaining the judgment." *Frye*, 2001 WL 839039, at *2; *see also San Mateo*, 2001 WL 120729, at *2; *Anderson v. Harrison*, No. 02A01-9805-GS-00132, 1999 WL 5057 at *3 (Tenn. Ct. App. Jan. 7, 1999) (no Tenn. R. App. P. 11 application filed); *Vaughn v. Vaughn*, No. 88-26-11, 1988 WL 68062 at *4 (Tenn. Ct. App. July 1, 1988) (no Tenn. R. App. P. 11 application filed).

On the other hand, because child support orders remained within the jurisdiction of the court and were subject to modification during their pendency, they were traditionally exempt from statute

[3]Prior to its amendment in 1987, Tenn. Code Ann. § 36-5-101 permitted modification "only upon a specific written finding that the obligor was unable to pay the full amount of such allowance through no intentional fault of his or her own and that the facts of the case require such a modification retroactively in order to meet the ends of justice." *Rutledge v. Barrett*, 802 S.W.2d 604, 605-06 (Tenn. 1991).

of limitations challenges, because they were not considered final. *State ex rel. Woody,* No. 44, 1990 WL 2867 (Tenn. Ct. App. Jan. 19, 1990) (no Tenn. R. App. P. 11 application filed).[4]

In 1987, in reaction to federal action designed to improve child support enforcement, the General Assembly addressed the retroactive modification problem and amended Tenn. Code Ann. § 36-5-101 to provide:

> Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state and shall be entitled to full faith and credit in this state and in any other state. Further, such judgment shall not be subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties.

Tenn. Code Ann. § 36-5-101(a)(5).

One clear result of this enactment was to remove from the courts the discretion to forgive or reduce past arrearages. *Rutledge v. Barrett*, 802 S.W.2d 604, 606 (Tenn. 1991). It also had the effect of removing the availability of traditional equitable defenses to enforcement actions, including laches. *Id*. 802 S.W.2d at 607. Finally, as the language makes clear, support orders became judgments enforceable as any other judgment. As a consequence, such judgments were "subject to the defenses applicable to judgments generally." *Bloom v. Bloom*, 769 S.W.2d 49, 492 (Tenn. Ct. App. 1988).

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[4]Despite the broad language of *Woody* and similar holdings, the exemption has only been applied, as far as we can conclude from our own research and from authority cited by the State, to situations where the limitations period had not yet run when measured from the time the order was no longer modifiable. *See Pera v. Peterson*, No. 72, 1990 WL 200582 (Tenn. Ct. App. Dec. 14, 1990) (no Tenn. R. App. P. 11 application filed) (order was entered in 1975, youngest child reached majority in 1990, and petition was filed in 1987); *Woody*, 1990 WL 2867 (order was entered in 1972, child reached majority in 1990, and petition to enforce was filed in 1988); *Vaughn*, 1988 WL 68062 (support order was entered in 1974, judgment for arrearages was entered in 1974, and enforcement action was brought in 1986); *Deck v. Parrish*, No. 83-280-II, 1984 Tenn. App. LEXIS 3136 (Tenn. Ct. App. Aug. 29, 1984) (no Tenn. R. App. P. 11 application filed) (although court declined to apply the statute of limitations to child support payments, the court held mother was equitably estopped to deny agreement to waive support payments and was guilty of laches in failing to seek back support until after the child reached majority, but within ten years of that event). In addition, we have been unable to locate earlier cases dealing with the applicability of the statute of limitations to child support cases. However, the general statute has been applied to bar an attempt to collect unpaid alimony, where the couple was divorced in 1935, wife remarried in 1938, and the action to collect alimony unpaid during that time was not filed until 1956. *Daugherty v. Dixon*, 41 Tenn. App. 623, 297 S.W.2d 944 (1956). Because alimony was also modifiable by the courts, child support and alimony orders were generally treated similarly. *Id*.

As an earlier statement implies, there are some cases indicating that child support orders are not subject to a statute of limitations.[5] However, as this court explained in *Rodakis v. Byrd*, No. 03A01-9206-GS-00202, 1992 WL 301312, at *2 (Tenn. Ct. App. Oct. 23, 1992) (no Tenn. R. App. P. 11 application filed):

> We have no quarrel with the result reached in the prior cases. We do believe, however, that each of the cases must be limited to its own circumstances. In each of the prior cases, the defaulting parent sought to avoid payment of only that portion of a judgment that accrued more than ten years before the action was brought to enforce the judgment. The distinguishing feature of this case is the failure of the custodial parent to bring an action to enforce the judgment until more than fourteen years had elapsed after the final payment under the judgment was due. We find this difference to be significant.

Whether because of the 1987 statutory change or for other reasons, this court has come to the conclusion that child support judgments, prior to the 1997 amendment eliminating limitations on such judgments, are subject to the ten year general statute of limitations as are other judgments not covered by more specific limitations statutes. *See Anderson*, 1999 WL 5057, at *3 (stating "Recent decisions by this court have demonstrated a growing acceptance of the premise that the ten-year statute of limitations applies to child support orders just as it applies to any other judgment or decree"). Because there was no clear legislative mandate exempting child support judgments, they were "subject to the defense of the statute of limitations as is 'any other judgment.'"[6] *In re Estate of Meader*, No. 03A01-9707-CH-00252, 1997 WL 672205, at *2 (Tenn. Ct. App. Oct. 30, 1997) (no Tenn. R. App. P. 11 application filed); *see also Rodakis*, 1992 WL 301312, at *4.

We agree with those cases that hold that the ten year statute of limitations in Tenn. Code Ann. § 28-3-110 applied to child support judgments before such limitations were eliminated in 1997. The broad wording of Tenn. Code Ann. § 28-3-110 to cover all judgments not otherwise specifically limited and the 1987 amendment to Tenn. Code Ann. § 36-5-101(a)(5) making such orders judgments enforceable as any other judgment compel this conclusion. In addition, our Supreme

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[5]A careful review of those cases, *see* footnote 4, indicates that they stand for the proposition that a defaulting obligor parent cannot assert the ten year statute of limitations to prevent enforcement of that portion of a child support obligation that was due more than ten years prior to the petition for enforcement. None involved an attempt to enforce a child support order more than ten years after the covered child reached the age of majority. *See also Basham v. Basham*, No. 01-A-01-9402-GS-00047, 1994 WL 388281 (Tenn. Ct. App. Jul. 27, 1994) (no Tenn. R. App. P. 11 application filed) (holding that the reasoning of *Rodakis v. Byrd*, No. 03A01-9206-GS-00202, 1992 WL 301312 (Tenn. Ct. App. Oct. 23, 1992) (no Tenn. R. App. P. 11 application filed), did not apply because the parent in *Basham* was not relieved of payments until after the date the petition was filed).

[6]Although the court expressed its full support of the view that child support payments and judgments therefor should never be barred by a limitations statute, the then current status of statutory and decisional law made no exception for such judgments. This opinion, obviously, predated the 1997 elimination of limitations on the enforcement of such orders.

Court has held that, prior to 1994,[7] when a child reached majority, accrued child support arrearages were enforceable only as a money judgment. *Kuykendall v. Wheeler*, 890 S.W.2d 785, 786 (Tenn. 1994). "The prevailing view is that accrued child support payments take on the form of a debt and become enforceable as money judgments even though the obligation to support the child is over." *Id.*; *see also Clinard v. Clinard*, No. 01S01-9502-CV0021, 1995 WL 563858, at * 3 (Tenn. Sept. 25, 1995) (rehearing denied Nov. 6, 1995);[8] *LeMasters v. Ross*, No. 01A01-9702-CV-00070, 1997 WL 717237, at *2 (Tenn. Ct. App. Nov. 19, 1997) (no Tenn. R. App. P. 11 application filed). Money judgments are subject to the ten year statute of limitations in Tenn. Code Ann. § 28-3-110.

Thus, the determinative question is not whether the 1971 child support order at issue herein is subject to the ten year statute of limitations, but, instead, is when that ten year period began to run. In *Rodakis v. Byrd*, this court analogized modifiable child support orders to interlocutory orders and held:

> The statute of limitations does not begin to run until a judgment is entered adjudicating all claims. *See Warren v. Haggard*, 803 S.W.2d 703 (Tenn. App. 1990). Treating a judgment for periodic child support as analogous to an interlocutory order, it follows, therefore, that the statute of limitations would not begin to run on such a judgment until the last payment was due by the terms of the judgment under scrutiny.

1992 WL 301312, at *3. More recently, this court has followed the same reasoning and held, "If a party is seeking to enforce an ongoing order for child support and the arrearages have not been reduced to judgment for a sum certain, then the statute begins to run when the last child support payment is supposed to have been made, which typically is when the child reaches the age of majority." *Frye*, 2001 WL 839039, at *2.

This conclusion is consistent with the reasoning behind those cases holding that child support orders that remain modifiable are not final for purposes of the application of the statute of limitations. Orders that are no longer modifiable would be considered final. Absent special circumstances, a court has authority to order child support payments only through a child's minority since a parent's duty to support ends at majority. *Churchill v. Churchill*, 203 Tenn. 406, 313 S.W.2d 436 (1968). "[T]he authority of the courts to order child support and, if necessary, to enforce the same by the process of contempt, is statutory, and generally exists only during minority." *Penland v. Penland*, 521 S.W.2d 222, 224 (Tenn. 1975); s*ee also Whitt v. Whitt*, 490 S.W.2d 159, 160 (Tenn. 1973); *Howard v. Howard*, 991 S.W.2d 251, 256 (Tenn. Ct. App. 1999); *Weinstein v. Heimberg*, 490

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[7]In 1994, the legislature amended the child support statutes to provide that accrued support arrearages survive the usual termination date and the order of support continues in effect until such arrearages are paid. Such orders are enforceable by contempt. Tenn. Code Ann. § 36-5-101(k). That enactment cannot be applied retroactively to the support order herein because the order terminated in 1988 when the youngest child reached majority. *Kuykendall v. Wheeler*, 890 S.W.2d 785, 787-88 (Tenn. 1994).

[8]This opinion was designated Not for Publication. Under Tenn. R. S. Ct. 4, such opinions are persuasive authority.

S.W.2d 692, 698 (Tenn. Ct. App. 1972). Consequently, the court's authority regarding child support, including the power to modify such orders, expires when the child reaches the age of eighteen.[9] *Kuykendall*, 890 S.W.2d at 786. However, the child's reaching the age of majority does not relieve a parent from liability for unpaid child support due during the child's minority. *Kuykendall*, 890 S.W.2d at 786; *Clinard*, 1995 WL 563858, at *3; *LeMasters*, 1997 WL 717237, at *2.

In the case before us, the ten-year statute of limitations began to run when the youngest child of the five children covered by the order reached the age of majority. The children at issue herein reached the age of majority February 27, 1980, December 5, 1982, September 13, 1984, April 6, 1987, and May 8, 1988.[10] The applicable statute of limitations began to run on their eighteenth birthdays and expired ten years from those dates. Because of the principle of proration, discussed below, the time for bringing an action to enforce the support order expired with regard to the first four children before the effective date of the 1997 legislation abolishing statutes of limitations as to child support judgments. Consequently, Mr. Johnson would have a vested right in the expiration of the limitations period to bar enforcement of the support order as to those children. However, the ten year statute of limitation would not have run with regard to the order to support the youngest child until May 8, 1998, ten months after the effective date of Tenn. Code Ann. § 36-5-103(g). Consequently, Mr. Johnson had no vested right to the protection of the statute of limitations as to support for that child.

III. Proration of Lump Sum Payment Orders

The original decree ordered Mr. Johnson to pay "the sum of $75 per week as support for said children, said sum to be paid into the office of the Clerk and Master not later than Twelve noon Saturday or each week beginning January 16, 1971." The order did not specify how the $75 was to be allocated among the five children.

In *Clinard*, our Supreme Court considered the issue of whether "proration should be applied when calculating child support arrearages" 1995 WL 563858, at *2. The court repeated the well-settled principle that a parent owes no legal duty to support a child past the age of majority and held:

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[9]Effective January 1, 1993, *see* 1992 Tenn. Pub. Acts ch. 794, § 3, the obligation to support has been extended. Tenn. Code Ann. § 34-1-102 now provides:

> Parents shall continue to be responsible for the support of each child for whom they are responsible after the child reaches eighteen (18) years if the child is in high school. The duty of support shall continue until the child graduates from high school or the class of which the child is a member when the child attains eighteen (18) years of age graduates, whichever occurs first.

[10]The Legal Responsibility Act of 1971, effective May 11, 1971, reduced the age of majority for persons in Tennessee from twenty-one years of age to eighteen years of age. *See* Tenn. Code Ann. § 1-3-113 (removing disabilities of minority of all persons 18 to 21 years of age on May 11, 1971, which was effective date of the Act, and from and after that date all persons reached their majority at age 18); *Whitt*, 490 S.W.2d at 160-61. The decree at issue herein was entered January 5, 1971, but at that time all of the children covered by the child support were under the age of eighteen, so they all reached the age of majority on their eighteenth birthday.

> In recognition of that long standing principle, at common law, child support awards were generally prorated as each child attained the age of majority. *Churchill v. Churchill*, 203 Tenn. 406, 313 S.W.2d 436 (1958); *Weinstein v. Heimberg*, 490 S.W.2d 692 (Tenn. App. 1972). . . . [P]roration is simply a rule of law which derives from the legal principle that parents generally owe no duty to support children who have attained the age of majority.

Clinard, 1995 WL 563858, at *2. The court found that the trial court had properly applied proration in calculating the amount of arrearage owed by the father in that case and reversed the Court of Appeals decision that proration was actually an impermissible retroactive modification since there had been no prior court order allowing proration.

The Court's discussion of the common law principles occurred in the context of its consideration of the applicability of a statutory change that provided that "unless the court specifically orders otherwise, any order which provides for the support of (2) or more persons shall be deemed prorated in equal shares among such persons." That provision was enacted as part of the Child Support Enforcement Act of 1985 and became effective October 1, 1985. 1985 Tenn. Pub. Acts ch. 477.[11] The Court found that statutory provision did not apply to the case before it because it was enacted after the youngest child who was the subject of the support order reached the age of majority. *Id*. at *2. That is not the situation in the case before us, because the youngest child in our case reached majority in May of 1988, and the statute does apply to the order before us.

Under that statute and under the common law principles explained by the Supreme Court in *Clinard*, the $75 per week ordered for support of five children must be prorated equally among them. Mr. Johnson owed support in the amount of $15 per week for support of the youngest child from the date of the divorce decree establishing the support obligation until that child reached the age of majority.

IV. The State's Interest

The State also asserts that the statute limitations in Tenn. Code Ann. § 28-3-110 cannot be applied to bar this enforcement action because "when the State is acting in its sovereign capacity," such limitations do not apply to the State absent express language to the contrary. The State also asserts it represents Ms. Mitchell pursuant to Title IV-D of the Social Security Act, 42 U.S.C. §§ 651, et seq.

> A Title IV-D case is essentially any cause of action in which the State is providing services on behalf of a parent relating to paternity or child support establishment or

[11]This provision was codified at Tenn. Code Ann. § 36-5-101(a). It was subsequently amended in 1994 to require proration only where the order was subject to enforcement under Title IV-D and at least one child was a public charge or received public assistance. *See* Tenn. Code Ann. § 36-5-101(a)(1) (Supp. 2003); *see also Clinard*, 1995 WL 563858, at *1. Because the 1994 amendment took place after the youngest child herein reached majority, it has no applicability to this case.

> enforcement either by request or, pursuant to the custodial parent's receipt of public assistance benefits under Title IV-A.

State ex rel. Patterson v. French, No. W2000-02668-COA-R3-CV, 2002 WL 1349498, at *3 (Tenn. Ct. App. Feb. 5, 2002) (no Tenn. R. App. P. 11 application filed).

Title IV-D is based upon the premise that Aid to Families with Dependent Children spending could be controlled by providing incentives to states to (1) increase enforcement of support statutes and (2) require parents to assign their rights to child support to the State as a condition of receipt of AFDC benefits. *Baker v. State ex rel Baker*, No. 01A01-9509-CV-00428, 1997 WL 749452, at *3 (Tenn. Ct. App. Dec. 5, 1997) (no Tenn. R. App. P. 11 application filed). States are required to provide child support collection assistance to all custodial parents, whether they were receiving AFDC assistance or not, and regardless of their financial status. *Id.* at *4; Tenn. Code Ann. § 71-3-124(c).

Thus, the State can have one of two roles in an action to enforce a child support order. Any applicant for or recipient of public assistance is deemed to have assigned to the State any rights to support from any other person. Tenn. Code Ann. § 71-3-124(a)(1). This assignment includes only those rights "which have accrued at the time such assignment is executed," which is defined as the date of any payment of public assistance. Tenn. Code Ann. § 71-3-124(a)(1)(B) and (a)(2). Further, "During the terms of such assignment, the department shall be subrogated to the rights of the child or children or the person having custody to collect and receive all child support payments." Tenn. Code Ann. § 71-3-124(a)(3). In that situation, the State may initiate a support action in its own name or in the name of the recipient to recover payments ordered by the courts. Tenn. Code Ann. § 71-3-124(a)(4). The department is required to certify to the appropriate court clerk that an assignment has been made. Tenn. Code Ann. § 71-3-124(b). When the State obtains subrogation rights under this procedure, it is arguable that the State is then proceeding in its own interests and is acting in a sovereign capacity.

The other role sometimes assumed by the State is to provide assistance in enforcing support orders, generally legal representation, to persons who have not applied for or received AFDC payments, but who have "otherwise applied for child or spousal support services pursuant to the provisions of subdivision (1) of Title IV-D of the Social Security Act." Tenn. Code Ann. § 71-3-124(c)(2). The IV-D program required the states to provide custodial parents with legal assistance in collecting child support, whether such parents were the recipients of AFDC support or not. *State ex rel. Norfleet v. Dobbs*, No. 01A01-9805-CV-00228, 1999 WL 43260, at *3 (Tenn. Ct. App. Feb. 1, 1999) (no Tenn. R. App. P. 11 application filed). Where a parent has not assigned his or her rights by receipt of public assistance, the State's role is limited to providing legal representation. This is accomplished through contracts between the department and either a governmental agency, such as a district attorney's office, or a private contractor. *See Baker*, 1997 WL 749452, at *1 n.2. In this situation, the department or its contractors "may file such legal actions without the necessity of intervening in an existing action or naming the state as a party to the action." Tenn. Code Ann. § 71-3-124(c)(2).

Where the State has not provided AFDC support, the parent is not required to assign to the State his or her interest in ordered child support. In that situation, the State is not a true party in interest with rights of its own to enforce. It is merely providing legal services representing the parent's interest. Consequently, the State's exemption from the application of statutes of limitation does not apply.

In the case before us, there is nothing in the record to indicate that Ms. Mitchell ever assigned her rights to the support or ever received AFDC support to trigger the assignment. No certification of assignment appears in our record.[12] The petition to enforce support was signed by Ms. Mitchell, and the district attorney's office provided legal representation. The Statement of the Evidence includes statements that Ms. Mitchell "only recently learned she might be eligible to collect support even though all of the children were over age 18" and that she alleged that "she is owed approximately $77,250.00 in child support arrears."

The record does not indicate the State brought this action in pursuance of any assigned or subrogation rights. We conclude that Ms. Mitchell cannot assert the State's exemption from statutes of limitation.

V. Conclusion

Consequently, we affirm in part and reverse in part the decision of the trial court dismissing the petition to enforce child support. We affirm that portion of the trial court's order dismissing the petition as to support for the first four children. We reverse the trial court's decision as to the youngest child and remand the case to the trial court for a determination of the exact amount of child support arrearages owed by Mr. Johnson. Costs of the appeal are taxed to appellee, Donald Filmore Johnson.

PATRICIA J. COTTRELL, JUDGE

[12]As an obvious consequence, this court would be unable to determine the extent of any rights Ms. Mitchell may have assigned.